



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

September 27, 2006

### **S. 2453**

### **National Security Surveillance Act of 2006**

*As reported by the Senate Committee on the Judiciary on September 13, 2006*

#### **SUMMARY**

S. 2453 would modify the rules and procedures the government must follow to use electronic surveillance programs in the investigation of international terrorism. The legislation would amend the definition of electronic surveillance under the Foreign Intelligence Surveillance Act (FISA) to remove the current distinction between treatment of wire and radio communications, and to focus FISA protections on domestic communications. The legislation also would expand the ability of the government to conduct electronic surveillance without a warrant in certain cases where the target of the surveillance is an agent of a foreign power.

S. 2453 would authorize the President, under certain conditions, to acquire foreign intelligence information concerning a person believed to be outside of the United States. To this end, the legislation would authorize the Attorney General to direct any person or organization with access to such information to provide the United States government with all assistance necessary to acquire such intelligence. The legislation directs that such persons shall be compensated at the prevailing rate for such assistance.

In addition, S. 2453 would increase penalties, including criminal fines, for use of unauthorized electronic surveillance and improper disclosure of information obtained through electronic surveillance programs. Criminal fines are recorded in the budget as revenues, deposited in the Crime Victims Fund, and later spent. As a result, enacting the bill could affect both revenues and direct spending for the collection and spending of such fines.

CBO has no basis for predicting how the volume or type of surveillance would be changed if S. 2453 were enacted. Furthermore, information regarding surveillance techniques and their associated costs are classified. For these reasons, CBO cannot estimate the impact on the federal budget of implementing S. 2453.

S. 2453 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that costs to state and local governments would fall well below the annual threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation).

The legislation also contains private-sector mandates as defined in UMRA, but CBO has no basis for estimating the costs of those mandates or whether the costs would exceed the annual threshold established in UMRA (\$128 million in 2006, adjusted annually for inflation).

## **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

CBO cannot estimate the budgetary impact of implementing S. 2453 because we cannot predict how the volume or type of surveillance would change under this legislation. Moreover, information regarding surveillance technologies and their associated costs are classified. Any changes in federal spending for surveillance activities under the legislation would be subject to the appropriation of the necessary funds.

Because S. 2453 would increase penalties for certain unauthorized activities, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded in the budget as revenues, then deposited in the Crime Victims Fund, and later spent. CBO cannot estimate the legislation's effect on revenues or direct spending.

## **ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

S. 2453 contains an intergovernmental mandate as defined in UMRA because it would allow federal law enforcement officers to require public institutions such as libraries to provide information. Because data about the number of public entities currently complying with similar requests and the costs of that compliance is classified, CBO cannot estimate the total costs state and local governments would incur to comply with this mandate. Based on information from a recent survey of public libraries, however, CBO estimates that the number of requests likely would be small and that the total costs to those entities would be well below the annual threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation).

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

S. 2453 contains private-sector mandates as defined in UMRA by requiring certain entities to assist the government with electronic surveillance and providing liability protections for those entities. CBO has no basis for estimating the costs of the mandates or whether the costs would exceed the annual threshold established in UMRA for private-sector mandates (\$128 million in 2006, adjusted annually for inflation).

The legislation would authorize the Attorney General, after obtaining the certification required under the legislation, to direct a person to immediately provide the government with all information, facilities, and assistance necessary to conduct electronic surveillance and to acquire foreign intelligence. Under current law, the Attorney General may direct a "common carrier" to provide such assistance with electronic surveillance. This legislation would expand the scope of entities that must comply with the government orders in such cases. Because CBO has no information about how often such entities would be directed to provide assistance or the costs associated with providing assistance, CBO has no basis for estimating the costs of this mandate. The legislation also would authorize the government to compensate, at the prevailing rate, a person for providing such information, facilities or assistance.

S. 2453 also would provide protection from a cause of action for any person providing information, facilities, or assistance as well as conducting physical searches in accordance with a directive from the Attorney General under the legislation. Because the legislation would eliminate existing rights to seek compensation for injury caused by certain acts, it would impose a private-sector mandate. The cost of the mandate would be the forgone net value of awards and settlements that could be received under current law. Because of the lack of information about both the value of awards in such cases and the number of claims that would be filed in the absence of this legislation, CBO cannot estimate the cost of this mandate.

## **PREVIOUS CBO ESTIMATES**

On September 25, 2006, CBO transmitted two cost estimates for H.R. 5825, the Electronic Surveillance Modernization Act. That bill was ordered reported on September 20, 2006, by both the House Committee on the Judiciary and the House Permanent Select Committee on Intelligence. The three pieces of legislation would have similar effects on the federal budget, and the cost estimates are similar; H.R. 5825 would not amend penalties related to unauthorized surveillance.

The House Judiciary version of H.R. 5825 contained an intergovernmental mandate that is not included in S. 2453 (a preemption of state liability laws to protect individuals who provided information or assistance to the federal government). The Intelligence committee's version of H.R. 5825 contain a provision that was excluded from the requirements of UMRA because it would be necessary for the national security (an authorization to use electronic surveillance without a warrant if there was an imminent threat of attack on the U.S.). These differences did not affect the estimate of costs on state, local, and tribal governments or the private sector.

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